

David Rogers - Re: Opinion

From: Brent Johnson
To: Scott Hennessy
Date: 10/9/2002 10:02 AM
Subject: Re: Opinion

I recently looked at the issue of whether credit cards can constitute cash and there was no clear answer in the law. Therefore the conclusion was that we could set any policy that we want. We can refuse to accept them for bonds and we can also choose to accept them. Either way is supportable.

>>> Scott Hennessy 10/09/02 08:22AM >>>

I appreciate your time and have one more question. Whereas checks are often looked at as "cash," in those instances that spell out using specific bonds, including "cash bond" where do credit cards come into play. Are they such that they cannot be immediately reduced to cash? We currently say no credit cards may be used on a cash bond, such as a possession bond. Therefore, should we also state that they cannot be used for any type of bond?

>>> Brent Johnson 10/08/02 05:34PM >>>

When a statute or rule authorizes or requires that a bond be posted, the statute or rule will sometimes state the type of bond that can be accepted. For instance, bail can only be posted as cash or written undertaking. A written undertaking is then defined as only that from a bail bond company or a specific type of property bond (discussed in rule 4-612). If the statute or rule does not require or limit the type of bond, then we would accept anything that can constitute a bond: cash, corporate bond, or property bond. The primary issue then is what constitutes each of the 3. Property bonds are defined by rule. Corporate bonds will be fairly self-evident. Cash is a little trickier because it may or may not include checks and/or certified funds. Many courts already accept checks as cash. The key in this area is ensuring that whatever is accepted can be immediately reduced to cash. You can adopt a policy that allows acceptance of the various types of bonds in all circumstances except those in which the statute or judge's order limits the bond to a certain type. The only area I am aware of in which the type is limited is bail. Let me know what additional questions you have.

>>> Scott Hennessy 10/01/02 03:36PM >>>

We members of the Accounting Committee are looking for your opinion on the question of the form of payment for bonds. In a memo from Judy Wilkins dated Jan 12, 2001, she referred to 78-36-8.5 where it required that Possiesson Bonds be in the form of "corporate bond, a cash bond, certified funds, or a property bond" I can also see where 78-20-4 states "Bail may be posted in cash or written undertaking"

There are other types of bonds, such as appeal bonds, cost bonds, etc. that the court will receive. Do you think that our standard for accepting any type of bond, whatsoever, should always be in the form of cash, certified funds, property bond, or other written undertaking?

It doesn't make sense to me to have someone pay cash or a cost bond only something like an appeal bond, rather than allowing a personal check. Is it all semantics, and only certain types of "bonds" really need to be in that form. If so, is there some definition we can use to determine if it cannot be other than the above forms?

I think some try to make it more difficult than it has to be sometimes, but I suppose if there is confusion, we need to try to make it more clear.

Can you give any advice on all of this?

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